**IN THE HIGH COURT OF JUDICATURE AT BOMBAY**

**CIVIL APPELLATE JURISDICTION**

**LETTERS PATENT APPEAL NO. 72 OF 2003**

**IN**

**WRIT PETITION NO. 1906 OF 2002**

Suresh B. Nikalje. .. Appellant.

vs.

The Chairman,
Palus Shikshan Prasarak
Mandal & Ors. .. Respondents.

Mr. S.C. Prabhu h/f N.V. Bandiwadekar
for Appellant.
Mr. P.G. Lad for Respondent No. 2.
Mr. R.M. Patne for R. Nos. 3 & 6.

..

**CORAM: J.N. PATEL &,**
**A.A. SAYED, JJ.**
**DATE: 17TH JULY, 2007.**

ORAL JUDGMENT (Per J.N. Patel, J.) :

. Heard the learned counsel for the parties.

2. Admit.

3. By consent, the appeal is taken up for final hearing.

4. The appellant came to be appointed by the respondent College by letter of appointment dated 12th June, 2000 as the Full Time Teacher/Lecturer in Zoology Subject in Arts, Commerce and Science College Palus, District Sangli in the scale of Rs. 8000-275-13000 with effect from 21st June, 2000. The appointment of the Petitioner was on probation for a period of two years with a condition that he has to pass the NET / SET / CSIR Examination during the period of probation and subject to the service conditions prescribed by the statutes, ordinance, Regulations and Rules framed thereunder from time to time. Immediately thereafter on 5th July, 2000 a corrigendum was sent to the appellant in respect of his appointment as a Lecturer in Zoology wherein it was clarified that his appointment is on purely Ad hoc basis for a period of one year as per the Government Order No. Higher & Technical Dept. NGC/1298/(4619) Visi-4/ dated 11.12.1999 and further instructions received by Govt. letter dated 13.6.2000 and subject to approval of the University. It appears that by letter dated 15th December, 2000, Shivaji University, Kolhapur conveyed to the Principal of the College as regards the approval for changes in staff and change of designation of the Teachers which the appellant claims was the letter of approval in respect of his appointment. Further, by

letter dated 30th March, 2001 the same was conveyed to the appellant by the Chairman of the Management who is running the institution that his appointment was temporarily approved by the Shivaji University. However, on 15th February, 2001 the Director for Higher Education, Kolhapur Division, Kolhapur informed that the appointments after 1/3/2000 in the open category are not satisfying all requisite conditions and, therefore, this will continue only for one year. Quoting Government Resolution dated 13/6/2000 it was clearly informed that his services will stand terminated with effect from 30/4/2001.

5. It appears that the services of the Petitioner stood terminated with effect from 30/4/2001.

6. The appellant challenged the order of termination before the College Tribunal by preferring an appeal. By judgment and order dated 23rd January 2002 passed in Appeal No. 5/2001/(S), the College Tribunal dismissed the appeal by observing that as the appellant was not having necessary qualification and, thereby, ineligible to be appointed as a Lecturer, his appointment on ad-hoc basis temporarily for one year and termination cannot be held to be illegal and the appeal came to be dismissed.

7. The order of the College Tribunal was challenged before this Court by preferring a writ

petition. The learned Single Judge by an order dated 13.6.2002 passed in Writ Petition No. 1906 of 2002 dismissed the writ petition on the ground that the appellant was appointed on probation for a period of two years and as his services have been terminated during the period of probation while he was probationer, he has no right to claim the post and, therefore, it cannot be said that the College Tribunal has committed any patent error of law in dismissing the appeal filed by the appellant.

8. The learned counsel appearing for the appellant submitted that the learned Single Judge has erred in holding that the appellant's services have been terminated during probation though in fact the appellant's appointment on probation against a vacant post was altered to one as ad-hoc appointment on temporary basis for a period of one year which was challenged before the College Tribunal.

9. It is further contended that during the pendency of the appeal before the College Tribunal, the appellant has been able to qualify NET / SET examination and, therefore, the College Tribunal ought to have directed the Respondents to continue his services and, therefore, the impugned decision deserves to be quashed and set aside.

10. The learned counsel appearing for the

respondents submitted that the appellant was not eligible to be appointed to the post of Lecturer in Zoology in a clear vacancy as he did not possess required qualification and, therefore, though he was selected and appointed against the said post the error was corrected and duly communicated to him by letter dated 5th July, 2000 and even the approval for appointment of the appellant was restricted for a period of one year, as ad-hoc/temporary and, therefore, the appellant has no claim to be continued as a Lecturer in Zoology against vacant post.

11. The learned counsel for the appellant has drawn our attention to a decision of this Court in Writ Petition No. 5782 of 2001 dated 18th April, 2002 in which this Court relying on a judgment delivered by Aurangabad Bench has held that the Government Resolution dated 18th February, 2001 though was held to be legal, valid and proper but clause 2 (b) is held to be unsustainable and came to be quashed and set aside as a consequence of which all terminations effected by various managements on this count were set aside. It has been also observed that the services of such persons should not be terminated and their cases be referred to the University Grant Commission (UGC) for considering all questions and contentions of relaxation in relation to their passing of NET and SET examinations.

12. In so far as the dismissal of the petition in limine by the learned Single Judge of this Court by order dated 13th June, 2002 is concerned, it is totally on a different premise but it does not in any manner help the appellant. The appellant has not been able to point out as to how the judgment and order of the College Tribunal in the appeal preferred by him which was impugned by him before the learned Single Judge is patently illegal or perverse particularly in the backdrop of the facts which are not disputed i.e. as on the date of the appointment, the appellant did not possess the necessary qualification and further in view of the fact that the appellant being appointed on ad-hoc basis temporarily for a period of one year, no fault can be found in his termination of services as the order of appointment was quite clear and the appellant was aware of that. The contention of the learned counsel for the appellant that the appellant having passed the NET / SET examination during the pendency of appeal does not in any manner make the appellant eligible for being continued in a permanent post for the very reason that it is on the date the person applies for appointment to the post he should possess the necessary qualification and as the appellant did not fulfil the eligibility criteria of having passed the NET / SET examination, the respondent University was justified in terminating his services.

13. In so far as the decision of the Division Bench

referred to by the learned counsel for the appellant is concerned, it is of no assistance to the appellant as that was not the issue before the College Tribunal. Therefore, we dismiss the Letters Patent Appeal. However, there shall be no order as to costs.

14. In view of the dismissal of the appeal, the civil application does not survive and the same is dismissed as infructuous.

**(J.N. Patel, J. )**

**(A.A. Sayed, J. )**